

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3
4 James D. Noland, Jr., a Nevada resident,

5 Plaintiff

6 v.

7 Organo Gold International, Inc., a Nevada
8 corporation, et. al,

9 Defendants

Case No.: 2:18-cv-01275-JAD-CWH

**Order Granting Motions for
Misjoinder and to Amend Complaint and
Denying Motions to Dismiss
and for Summary Judgment as Moot**

[ECF Nos. 19, 45, 60, 68, 70]

10 James D. Noland, Jr. brings this civil action for deceptive trade practices and racketeering
11 against his former partners in Organo Gold Enterprises, Inc., a multi-level marketing company,
12 and others he alleges they conspired with. Though this action is just a few months old, many
13 motions are pending. I take this opportunity to resolve a number of those motions so that this
14 case can move forward.

15 **I. Motion for Misjoinder [ECF Nos. 60, 70]**

16 Plaintiff Noland moves “for an order of misjoinder and dropping defendant Organo Gold
17 International Inc., a Washington Corporation from the Case under Rule 21.”¹ He represents that
18 this Washington entity is “a duplicate of” the Nevada corporation that is the first-named
19 defendant in this case caption.² No defendant opposes the request, and Magistrate Judge
20 Hoffman recommends that I grant it and dismiss the claims against Organo Gold International,

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23 ¹ ECF No. 60.

² *Id.* at 1.

1 Inc., a Washington Corporation.³ The deadline to object to that report and recommendation
2 passed without objection, and “no review is required of a magistrate judge’s report and
3 recommendation unless objections are filed.”⁴ I adopt the report and recommendation,⁵ grant the
4 motion for an order of misjoinder,⁶ and dismiss without prejudice all claims against this
5 Washington entity.

6 **II. Motion to amend complaint [ECF No. 68]**

7 Noland also moves to amend and supplement his complaint.⁷ He includes a proposed
8 first amended complaint with his request.⁸ The deadline to oppose the motion has passed. Three
9 of the defendants filed notices of non-opposition,⁹ and no defendant has filed an opposition.
10 Local Rule 7-2(d) states that “[t]he failure of an opposing party to file points and authorities in
11 response to any motion . . . constitutes a consent to the granting of the motion.”¹⁰ I deem the
12 remaining parties’ silence as their consent to granting this motion, and I grant Noland’s motion
13 to amend and supplement his complaint.¹¹ Noland has 10 days to file the amended complaint in
14 the format attached to his motion.¹²

16 ³ ECF No. 70.

17 ⁴ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474
18 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

19 ⁵ ECF No. 70.

20 ⁶ ECF No. 60.

21 ⁷ ECF No. 68.

22 ⁸ ECF No. 68-1.

23 ⁹ ECF Nos. 72, 73.

¹⁰ L.R. 7-2(d).

¹¹ ECF No. 68.

¹² ECF No. 68-1.

1 **III. Other motions mooted by amendment [ECF Nos. 19, 45]**

2 An amended complaint supersedes all prior complaints and moots any motion directed at
3 an earlier version of the complaint.¹³ Here, those motions are Holton and Earlene Buggs' Rule
4 12 Motion to Dismiss Plaintiff's Complaint¹⁴ and Organo Gold International's Motion for
5 Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings.¹⁵ Because
6 these motions will be mooted by the filing of the amended complaint, I deny both without
7 prejudice to their proponents' ability to file new motions directed at the amended complaint.

8 **Conclusion**

9 IT IS THEREFORE ORDERED that

- 10 • The Motion for an Order of Misjoinder **[ECF No. 60] is GRANTED**, the Report and
11 Recommendation on that motion **[ECF No. 70] is ADOPTED**, and **all claims against**
12 **Organo Gold International, Inc., a Washington Corporation, are DISMISSED**
13 **without prejudice;**
- 14 • Plaintiff's Motion to Amend and Supplement Plaintiff's Complaint **[ECF No. 68] is**
15 **GRANTED**; Nolan has 10 days to file his amended complaint in the format proposed at
16 ECF No. 68-1;
- 17 • Holton and Earlene Buggs' Rule 12 Motion to Dismiss Plaintiff's Complaint **[ECF No.**
18 **19] is DENIED** without prejudice as moot; and
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22 ¹³ *Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015).

23 ¹⁴ ECF No. 19.

¹⁵ ECF No. 45.

- Organo Gold International's Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings [ECF No. 45] is **DENIED** without prejudice as moot.

Dated: November 6, 2018



U.S. District Judge Jennifer A. Dorsey